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Alexandria, VA 22313-1450

REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been

filed in the U.S. D	Pistrict Court Northern I	District of California on the following P	atents or Trademarks:			
DOCKET NO.	DATE FILED	U.S. DISTRICT COURT	U.S. DISTRICT COURT			
CV 09-00788 EMC	2/23/09	450 Golden Gate Avenue; P.O. Box	36060; San Francisco, CA 94102			
PLAINTIFF	·	DEFENDANT				
ALIPHCOM INC		PLANTRONICS INC				
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PATENT OR	DATE OF PATEN	The state of the s				
TRADEMARK NO.	OR TRADEMARI		OR TRADEMARK			
1 see Complaint						
- See Complaint						
2 5,712,453						
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In the abo	ve—entitled case, the follow	ving patent(s) have been included:				
DATE INCLUDED	INCLUDED BY					
		Amendment Answer Cross Bil	II Other Pleading			
PATENT OR	DATE OF PATEN		OR TRADEMARK			
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	ve—entitied case, the follow	ring decision has been rendered or judgement issue	ea:			
DECISION/JUDGEMENT						
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CLERK		(BY) DEPUTY CLERK	DATE			

Richard W. Wieking		Sheila Rash	February 23, 2009			

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12								
13	Attorneys for Plaintiff ALIPHCOM, INC.		To a					
	ALII IICOM, INC.		EMC					
14	UNITED STATES DISTRICT COURT							
15	NORTHERN DISTRIC	T OF CALIFORN	IIA					
16			1988					
17	ALIPHCOM, INC.,							
18	Plaintiff,	COMPLAINT	FOR DECLARATORY					
19		RELIEF	I OM DECEMBER OF THE					
20	V.	DEMAND FOR	R JURY TRIAL					
21	PLANTRONICS, INC.,							
22	Defendant.							
23								
24	Plaintiff AliphCom, Inc. ("Aliph") alleges	as follows:						
25	PARTIES							
26	1. Plaintiff AliphCom, Inc. is a California corporation with its principal place of							
27	business at 99 Rhode Island Street, Third Floor, San Francisco, California 94103.							
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	COMPLAINT pa-1320573							
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- 2. On information and belief, defendant Plantronics, Inc. ("Plantronics") is a Delaware corporation with its principal place of business at 345 Encinal Street, Santa Cruz, California 95060.
- 3. Plantronics is listed as an assignee on the face of United States Patent No. 5,712,453 (the "'453 Patent" or the "patent in suit"). The '453 Patent lists its issuance date as January 27, 1998, and its title as "Concha Headset Stabilizer." A true and correct copy of the patent in suit is attached hereto as Exhibit A.

JURISDICTION

- 4. This is an action under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, for a declaration pursuant to the patent laws of the United States, 35 U.S.C. § 1 et. seq., that the patent in suit is not infringed by Aliph or is invalid or both.
- 5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question) and 1338(a) (action arising under an Act of Congress relating to patents).
- 6. On information and belief, this Court has specific and general personal jurisdiction over Plantronics. In particular, on information and belief, Plantronics' principal place of business is in this Judicial District, and it conducts or solicits substantial business within this district and elsewhere in California.

VENUE

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)-(c). On information and belief, Plantronics resides within this Judicial District for venue purposes.

INTRADISTRICT ASSIGNMENT

8. Pursuant to Local Rule 3-2(c), the Intradistrict Assignment rules are inapplicable to this Complaint.

PENDENCY OF OTHER ACTION

9. An action titled *Plantronics*, *Inc. v. Aliph, Inc. and AliphCom, Inc.*, No. 06:09-cv-00024-LED ("Texas Action"), is pending in the United States District Court for the Eastern District of Texas, Tyler Division, involving the same named parties and the same patent in suit.

GENERAL ALLEGATIONS

- 10. On January 15, 2009, Plantronics filed the Texas Action against Aliph.

 Plantronics accused Aliph's Jawbone New Fit Earbuds (the "Earbuds") of infringing one or more claims of the '453 Patent.
 - 11. Aliph denies that it infringes any valid claim of the patent in suit.
- 12. On February 13, 2009, for the convenience of parties and witnesses, in the interest of justice, Aliph moved the court in the Texas Action for an order transferring that case to this Judicial District pursuant to 28 U.S.C. § 1404(a). On information and belief, Plantronics opposes transfer to this Judicial District.
- On information and belief, after inspection of the file history of the patent in suit and the assignment records of the United States Patent and Trademark Office ("USPTO"), it appears that Plantronics may not be the sole owner of the patent in suit and, therefore, may lack standing to maintain a lawsuit alleging infringement of the patent in suit.
- 14. An actual and justiciable controversy exists between Plantronics and Aliph concerning whether Aliph infringes any valid claim of the patent in suit and whether Plantronics is the owner of all right, title, and interest in and to the '453 Patent. Aliph now seeks a declaratory judgment from this Court that the patent in suit is not infringed by Aliph or is invalid or both. Aliph also seeks a declaratory judgment from this Court as to whether Plantronics is the owner of all right, title, and interest in and to the '453 Patent.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment Regarding Infringement of the '453 Patent)

- 15. Aliph incorporates by reference paragraphs 1 to 14 above.
- 16. Aliph does not and has not infringed, directly or indirectly, literally or by equivalents, any valid and enforceable claim of the '453 Patent.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment Regarding Invalidity of the '453 Patent)

17. Aliph incorporates by reference paragraphs 1 to 16 above.

1	18. The claims of the '453 Patent are invalid because, inter alia, the '453 Patent was
2	not obtained in a manner consistent with and required by the provisions of Title 35 of the United
3	States Code, and in particular because it fails to comply with at least the required conditions for
4	patentability under 35 U.S.C. §§ 102, 103 and/or 112.
5	THIRD CLAIM FOR RELIEF
6	(Declaratory Judgment Regarding Ownership of the '453 Patent)
7	19. Aliph incorporates by reference paragraphs 1 to 18 above.
8	20. On information and belief, Plantronics is not the owner of all right, title, and
9	interest in and to the '453 Patent and, accordingly, Plantronics lacks standing to bring a lawsuit
10	alleging infringement of the patent in suit.
11	PRAYER FOR RELIEF
12	WHEREFORE, Aliph prays for relief as follows:
13	1. That the Court declare that Aliph does not and has not infringed, directly or
14	indirectly, literally or by equivalents, any valid and enforceable claim of the '453 Patent.
15	2. That the Court declare that the claims of the '453 Patent are invalid;
16	3. That the Court declare that Plantronics is not the owner of all right, title, and
17	interest in and to the '453 Patent.
18	4. That the Court declare that this is an exceptional case under 35 U.S.C. § 285;
19	5. That the Court award Aliph its costs and fees in this action, including attorneys'
20	fees, and pre-judgment interest thereon; and
21	6. That the Court grant Aliph such other and further relief as the Court deems just
22	and proper.
23	JURY DEMAND
24	Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Aliph hereby demands a tria
25	by jury of all issues so triable in this action.
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By:

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Attorneys for Plaintiff ALIPHCOM, INC.

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